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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,613

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Seiichiro Miyahara

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EXAMINER

BOWERS, NATHAN ANDREW

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/585,613	<b>Applicant(s)</b> MIYAHARA, SEIICHIRO	
	<b>Examiner</b> NATHAN A. BOWERS	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>100406, 042707, 072809</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 1) Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ammann (US 20020098117).

With respect to claims 1, 8 and 9, Ammann discloses a plurality of temperature control devices (Figure 3:600, 602, 604, 606) in the form of incubators. This is described in paragraphs [0249]-[0251]. Each incubator is capable of adopting a first predetermined culturing temperature of 27 degrees Celsius and a second predetermined culturing temperature within the range of 30 to 32 degrees Celsius. The heating devices, temperature sensors, and control system described in paragraphs [0260] and [0262] are fully capable of ensuring that each incubator is maintained at temperatures of 27 degrees Celsius and within the range of 30 to 32 degrees Celsius. The disclosed control system is additionally capable of being programmed to switch between two different temperatures at predetermined intervals over a designated time period.

With respect to claim 2, Ammann discloses the apparatus in claim 1 wherein a plurality of temperature control devices (Figure 3:600, 602, 604, 606) are provided. This

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has been described in the rejection above. Ammann additionally states in paragraph [0262] that each incubator is connected to a control device. The temperature sensors and electrical connectors disclosed by Ammann are considered to be communication units that serve to link the incubators with the control device.

With respect to claims 3 and 5-7, Ammann discloses the apparatus in claim 1. As noted previously in the rejections above, Ammann discloses a plurality of incubators each in communication with each other and a controller. Although Ammann does not expressly state that a specific incubator is used to control the others, any of the Ammann incubators are fully capable of being evaluated so that information from that specific incubator is used to control the operation of the other incubators. This is due to the fact that the controller of Ammann is fully capable of being programmed to consider any information (such as a sensed condition within a specific incubator) when determining the protocol for all other incubators.

Alternatively, the control system of Ammann is fully capable of being programmed so that each incubator is controlled independently by the controller.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As described above, Ammann discloses all of the *structural* limitations set forth in the claims – Ammann teaches a plurality of incubators in communication with a controller and a plurality of

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temperature sensors and heaters. The controller is fully capable of being programmed to control each incubator independently or collectively. The controller is fully capable of being programmed to consider information derived from a specific incubator when determining how to regulate conditions within the other incubators.

With respect to claim 4, Ammann discloses the apparatus in claim 3 wherein each incubator temperature control device comprises a plurality of internal testing locations (i.e. addresses) along the periphery of a carousel assembly. This is disclosed in paragraph [0257] and Figure 22. Paragraph [0259] states that the controller is used to regulate the rotation of the carousel, and thereby manage the position of the testing locations (i.e. addresses) within each incubator.

With respect to claims 10-12, Ammann discloses the apparatus in claims 1-9. The heating elements, sensors, and control systems disclosed by Ammann in paragraphs [0260] and [0262] are fully capable of producing temperatures of 42 to 44.5 degrees Celsius and 35 to 37 degrees Celsius. The resistive heaters, heating foils, and Peltier heaters disclosed by Butts are very similar to the linear/sheet heaters disclosed by Applicant, and are known in the art to be capable of producing temperatures of 42 to 44.5 degrees Celsius and 35 to 37 degrees Celsius.

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2) Claims 1-3, 5-9, 10/(1-3, 5-9), 11/(1-3, 5-9) and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Butts (US 6518059).

With respect to claims 1, 8 and 9, Butts discloses a plurality of temperature control devices (Figure 5:10, 100) each capable of accommodating a cell culture. This is described in column 4, lines 20-49. Each temperature control device includes a heater (Figure 5:42, 104) fully capable of maintaining a first temperature of 27 degrees Celsius and a second temperature of 30 to 32 degrees Celsius. The disclosed control system is additionally capable of being programmed to switch between two different temperatures at predetermined intervals over a designated time period.

With respect to claim 2, Butts discloses the apparatus in claim 1 wherein a plurality of temperature control devices (Figure 5:10, 100) are provided. This has been described in the rejection above. Butts additionally states in column 3, lines 50-54 that each incubator is connected to a control device (Figure 4:36). The temperature sensors (Figure 5:38) and electrical connectors (Figure 5:14) disclosed by Butts are considered to be communication units that serve to link the incubators with the control device.

With respect to claims 3 and 5-7, Butts discloses the apparatus in claim 1. As noted previously in the rejections above, Butts discloses a plurality of incubators each in communication with each other and a controller. Furthermore, Butts teaches in column 4, lines 20-49 that a master incubator is used to control the others so that detected information from every other incubator is sent to the master incubator.

Alternatively, the control system of Butts is fully capable of being programmed so that each incubator is controlled independently by the controller.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As described above, Butts discloses all of the *structural* limitations set forth in the claims – Butts teaches a plurality of incubators in communication with a controller and a plurality of temperature sensors and heaters. The controller is fully capable of being programmed to control each incubator independently or collectively. The controller is fully capable of being programmed to consider information derived from a specific incubator when determining how to regulate conditions within the other incubators.

With respect to claims 10/(1-3, 5-9), 11/(1-3, 5-9) and 12, Butts discloses the apparatus in claims 1-3 and 5-9. The heating elements, sensors, and control systems disclosed by Butts in column 3, lines 39-65 are fully capable of producing temperatures of 42 to 44.5 degrees Celsius and 35 to 37 degrees Celsius. The conventional, resistive heaters disclosed by Butts are very similar to the linear/sheet heaters disclosed by Applicant, and are known in the art to be capable of producing temperatures of 42 to 44.5 degrees Celsius and 35 to 37 degrees Celsius.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Ohno (US 7241616) and George (US 20090037031 – not prior art) references disclose the use of temperature control devices regulated by a controller.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHAN A. BOWERS whose telephone number is (571)272-8613. The examiner can normally be reached on Monday-Friday 7 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on (571) 272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nathan A Bowers/  
Examiner, Art Unit 1797